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MICHAEL RASH

v.

Docket No. 50-87-263-1

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Michael Rash, grievant, is employed by the Wayne County Board of Education as a teacher assigned to Crum High School. On October 14, 1987 he filed a level four grievance alleging violation of W.Va. Code, 18A-4-8b(a) in that a teaching position was posted with the incorrect subject areas to be taught and he therefore was not considered for the position when in fact he was certified for the courses that were actually taught. A level four hearing was conducted by the Charleston examiner on January 14, 1988. At that time, the transcript and decision of the level two hearing as well as some other documents were admitted into the evidence and there was brief testimony of several witnesses to supplement the existing record. On January 14, 1988 the board's counsel submitted its proposed findings of facts and conclusions of law. The case was transferred to the undersigned hearing examiner March 17, 1988 and grievant's representative filed proposals May 9, 1988.

In early July 1983, Yvonne Stroud, a teacher at Wayne Middle School, bid on and received a posted position at Westmoreland School. The job at Westmoreland required certification in secondary science as well as secondary social studies for which Ms. Stroud was duly qualified. Her vacant position at Wayne was posted between July 22 and July 28 listing a requirement for both science and social studies certification. Grievant herein, who is certified in science and physical education, as well as approximately fourteen other applicants vied for the position but John Hall who met the stated certification requirements was hired; he subsequently resigned in early August for a job elsewhere. Between August 17 and 21 the Wayne position was reposted. Grievant herein as well as a half dozen other teachers applied for the position and Terry Thompson, a substitute teacher, was awarded the position as he possessed the requisite certification. Mr. Thompson was assigned to teach several periods of science but no social studies and was additionally assigned to cover a physical education class.¹

Grievant, who has three years seniority in the county, alleges the posting was improper and the procedure tainted as the successful applicant was a substitute teacher and was not assigned to a social studies class but rather had one assignment to "cover" a PE class (assist the teacher because of the large number of

¹ According to the testimony at level four, Mr. Thompson subsequently resigned from the position and a substitute teacher currently held the multiple vacated position.

students). Grievant contends that the "creative posting" precluded him from receiving a job for which he was qualified and he hinted that the posting accommodated Mr. Thompson who had board employed relatives. He asks as relief that the position vacancy at Wayne Middle School be reposted for the 1988-89 school term and correctly state the nature of the needed and required teaching areas of science and physical education.

School officials attempted to rationalize the posting that occurred at Wayne Middle School. Nancy Adkins, principal at Wayne Middle School, was asked why the position vacancy was posted in the manner that it was. Ms. Adkins did not identify a needs basis, rather she testified that she checked with Ms. Stroud before she left about her certification, which was social studies and science, and therefore asked the superintendent to post the position with the same certification that Stroud had. Cross-examination of the principal established that Yvonne Stroud had not been assigned to teach social studies at Wayne in the past because of need at that school. Rather Stroud was assigned a social studies class at Wayne for at least one term at her own request in order that she could decide the teaching field in which she wanted to remain. (T4.7-9).² In addition, the

² Judy Davis, a remedial reading teacher who has taught at Wayne for eight years, was called by the grievant to testify at level four. She stated she could only recall Ms. Stroud teaching a social studies class for one of the three years Stroud remained at Wayne. She knew of five seventh and eighth grade teachers with social studies certification at Wayne and all of them were not presently teaching in that field -- two were teaching full-time and she (Ms. Davis) covered the social studies content area for students in the low group. (T4.4).

Wayne 1987-88 teaching schedule did not schedule a social studies class in the vacant position and it would appear the principal would have determined her staff's academic schedules by July or August for the upcoming term.

The board contends the job which grievant sought was not arbitrarily posted or posted in a creative manner so as to exclude grievant from the position. It relies on county policy that a principal may equitably assign members of his or her staff to specific duties and teaching assignments as necessary and urges that grievant has not proven his case.

The grievance herein does not challenge a principal's authority to make staff teaching assignments and, thus, the board's reliance on its stated policy is unfounded and misleading in this instance. The issue herein addresses the propriety of the board's job posting practices for the particular vacancy at Wayne Middle School of which grievant complains, and a board of education is required to post job vacancies with valid, accurate and necessary qualifications for the position to be taught as contemplated by W.Va. Code, 18A-4-8b(a).

In addition to the foregoing narration, the following findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. On July 1, 1987 Yvonne Stroud who had been assigned to Wayne Middle School since the 1985-86 school term applied for and received a position at Westmoreland School. The position at Westmoreland School required a science and social studies teacher, certification which Stroud held, and, according to the superintendent of schools, that posting was absolutely essential and especially created because Westmoreland School was short staffed and the principal at that school thought he might need both the science and social studies teaching areas covered. (T2.21).

2. Ms. Stroud's vacant position at Wayne Middle School was posted on or about July 22 through July 28, 1987 and the posting stated that the applicants be certified in both science and social studies. Grievant herein, certified in science and physical education, and other teachers holding various certifications applied for the position. John Hall was employed for the position but he resigned shortly after for employment elsewhere. The job was reposted in mid-August and grievant again applied, however, Terry Thompson, a substitute teacher certified in social studies and science, was selected.

3. Wayne Middle School does not have a shortage of social studies teachers (T4.4) and even though Ms. Stroud was originally assigned to teach one class of social studies for at least one of the three years that she was at Wayne, it is clear by the principal's testimony that the assignment was made to accommodate Ms. Stroud's desire to teach in her other area of certification so she could decide in which area she wanted to remain. (T4.9,10).

4. The 1987-88 Wayne School teaching schedule available in July and August 1987 for the position vacated by Ms. Stroud did not include a social studies teaching assignment and the successful applicant who was certified in science and social studies was assigned to teach only science and to "cover" and assist with a physical education class. The schedule indicates several teachers are assigned a class period to cover a PE class; while the assignment may not require PE certification it is designated as instructional time and a certified PE teacher is eminently more qualified for the assignment than a teacher who is not PE certified.

5. Although it may be desirable for a principal to have staff teachers with multi-certification and teaching areas, the board did not demonstrate a rational basis for posting a science teaching position at Wayne Middle School with a requirement that the applicant be certified in both science and social studies when a social studies teaching assignment was not needed.

CONCLUSIONS OF LAW

1. School law requires that a board of education post and date notices of all openings in established, existing or newly created positions for all professional personnel to observe and consider and the position opening shall include the job description. W.Va. Code, 18A-4-8b(a). Bonfantino v. Marion County Board of Education, Docket No. 24-86-079; Kell v. McDowell County Board of Education, Docket No. 33-87-236.

2. The purpose of the job posting statute to accurately reflect the teaching responsibilities of the position is frustrated and confounded when a board of education denotes required certification areas that are not necessary for the vacant posted position.

3. Certification requirements unnecessarily listed in a posted position is unfair to applicants and would-be applicants who have relied on the criteria described in the posting and is indicative of an arbitrary employment process. See, Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986); Yearego v. Jackson County Board of Education, Docket No. 18-87-031-1; Miller v. McDowell County Board of Education, Docket No. 33-87-133-1.

4. Grievant has proven by a preponderance of the evidence that a science teacher is required at Wayne Middle School and the requirement that the successful applicant also be certified in social studies was unnecessary and arbitrary on the board's part.

Accordingly, this grievance is GRANTED and the board is Ordered to repost the science teaching position at Wayne Middle School effective the 1988-89 school year.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the court.

DATED:

June 7, 1988

Nedra Koval

NEDRA KOVAL
Hearing Examiner